November 13, 2013

Securities and Exchange Commission
Attn: Elizabeth M. Murphy
100 F Street, N.E.
Washington, DC 20549-1000

Via email (rule-comments@sec.gov)

Re: Pay Ratio Disclosure, File No. S7-07-13

Dear Securities and Exchange Commission,

I, Ashley Ray, appreciate this opportunity to provide the Securities and Exchange Commission ("the Commission") with comments pertaining to the pay ratio disclosure requirement. I would like to thank the Commission and its employees for taking valuable time to review federal regulation and addressing particular concerns of various businesses.

To begin, I strongly support the Commission's proposal requiring the disclosure of the CEO-to-median employee pay ratio as mandated by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, I am not in complete agreement with the Commission's proposed amendment to exclude smaller reporting companies from disclosing the median of the annual total compensation of all employees of an issuer (excluding the chief executive officer), the annual total compensation of that issuer's chief executive officer, and the ratio of the median of the annual total compensation of all employees to the annual total compensation of the chief executive officer.[1]

Under the rules and definitions of the Commission, "smaller reporting companies" are companies that 1) have a common equity public float of less than $75 million or 2) are unable to calculate their public float and have annual revenue of $50 million or less, upon entering the system.[2] A company's public float typically represents the portion of shares of a corporation that are in the hands of public investors.

Although I understand the Commission's efforts to avoid burdening smaller reporting companies from regulation, I do not agree that smaller reporting companies should be entirely exempt from the pay ratio disclosure requirement. As explained in more detail below, I suggest that the Commission should carefully consider including all publicly traded companies to comply with the pay ratio disclosure requirement because the disclosed information would greatly benefit investors in a variety of ways.

[1] These requirements will be addressed as "the pay ratio disclosure requirement" throughout my comment letter.
[2] SECURITIES AND EXCHANGE COMMISSION, No. S7-15-07, at 17, SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION (2007).

I. **Smaller Reporting Companies should not be exempt from the pay ratio disclosure requirement because Congress intended for all publicly traded companies to comply with the pay ratio disclosure requirement.**

The Dodd-Frank Act mandates each issuer to disclose information on the executive compensation pay within a company. The portion of the statute that is relevant to the pay ratio disclosure requirement, which is mandated by Congress, is in section 953(b) under the Dodd-Frank Act stating:

> ''(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The H. R. 4173—529."

In response to section 953(b), the Commission uses Item 402(n)[3], a federal regulation, as a rationale to exempt smaller reporting companies from the pay ratio disclosure requirement. The Commission states that the requirements in Item 402(n) for the disclosure of a summary compensation table information does not apply to smaller reporting companies.[4] Item 402(n) focuses on the disclosure requirements of executive compensation for smaller reporting companies. The Commission further explains that under Item 402(n)(2), smaller reporting companies are not required to include the aggregate change in the actuarial present value of pension benefits that is required for companies that are subject to the pay ratio disclosure requirement.[5] The Commission concludes that since Item 402(n) does not require smaller reporting companies to include the disclosure of the aggregate change in pension benefits, Congress intended for all smaller reporting companies to be excluded from the pay ratio disclosure requirement.[6]

The Commission also argues that "we believe that by requiring the use of Item 402(c)(2)(x) to calculate total compensation (without mention of Item 402(n)(2)(x)), Congress intended to exclude smaller reporting companies from the scope of Section 953(b)."[7] The language under Item 402(n)(2)(x) merely states "the dollar value of total compensation for the covered fiscal year, with respect to each named executive officer, disclose the sum of all amounts reported."[8] This section makes no reference to exempting smaller reporting companies. Simply failing to mention Item 402(n)(2)(x) does not mean that Congress intended to permanently exempt smaller reporting companies from the pay ratio disclosure requirement,

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[3] Item 402(n) focuses on the disclosure requirements of executive compensation for smaller reporting companies.
[4] SECURITIES AND EXCHANGE COMMISSION, No. S7-07-13, at 17, PAY RATIO DISCLOSURE (2013).
[5] 17 C.F.R. § 229.402(n)(2)(viii) (2011).
[6] PAY RATIO DISCLOSURE, *supra* note 3, at 17.
[7] *Id*.
[8] 17 C.F.R. § 229.402(n)(2)(x) (2011).

especially when an exemption was not explicitly stated in the regulation. There is even an entire section under Item 402(n)(2) that instructs smaller reporting companies to include any amount of salary or bonus at the election of a named executive officer.[9] This instruction indicates that Congress was concerned with the compensation of executive officers and intended for smaller reporting companies to be subject to the pay ratio disclosure requirement. Therefore, the wording in Item 402(n) as a whole should be reevaluated by the Commission in order to truly capture the legislative intent.

Additionally, the Commission automatically inferred that if Congress failed to mention a group or phrase, then Congress indirectly addressed the issue. In some instances, a Congressional silence in a federal act may merely imply that Congress believed nothing additional needed to be mentioned within the legislation.[10] However, in many instances, the Congressional silence may reflect that Congress has not addressed the issue at all, which is most likely the case in Section 953(b). "When Congressional silence is at a threshold, we must be shown that Congress was 'obviously aware' of the policy in question and consciously acted or did not act in response to that policy."[11] In other words, while Congress cannot be expected to anticipate and address all issues that may arise within legislation, the Court often assumes that Congress will explicitly address the major concerns.[12]

The United States Supreme Court frequently relies on different canons of construction to draw inferences on the meaning of statutory language. In this instance, the Plain Meaning Rule, a legislation canon of construction, would apply in Section 953(b). The Plain Meaning Rule "in its most commonly stated form holds that the interpretation of statutes begins and ends with the literal text when that language is clear and unambiguous."[13] To further explain, if Congress wanted to purposefully exclude a group or a certain type of business, Congress would have explicitly stated such exclusion in the federal legislation. There is no mention of exempting smaller reporting companies from the pay ratio disclosure requirement under Section 953(b). In fact, under Section 953(b), Congress explicitly mentioned that "each issuer" is to be subject to the pay ratio disclosure requirement. The phrase "each issuer" signals that no particular business or company is exempt from the disclosure requirement.

Lastly, the purpose of Section 953(b) of the Dodd-Frank Act should also be considered. The key policy behind the disclosure of pay ratio is to monitor how the wealth is dispersed within publically traded companies, particularly among chief executives. Excluding certain publically traded companies from pay ratio disclosure would defeat the purpose and policy of Section 953(b). Therefore, Congress intended to subject all publicly traded companies to the pay ratio disclosure requirement, not just a select few.

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[9] *Id*.
[10] Burns v. U.S., 501 U.S. 129, 136 (1991).
[11] Inner City Broad. Corp. v. Sanders, 733 F.2d 154, 160 (D.C. Cir. 1984).
[12] Yule Kim, CRS REPORT FOR CONGRESS, Order Code 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS (2008).
[13] Matthew J. Hertko, *Statutory Interpretation in Illinois: Abandoning the Plain Meaning Rule for an Extratextual Approach*, U. Ill. L. Rev. 377, 378 (2005).

II. Subjecting smaller reporting companies to the pay ratio disclosure requirement would support Congress's demand for greater pay-related disclosures and benefit public investors.

On April 4, 2011, Section 951 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 by adding Section 14A.[14] Section 14A requires companies to conduct a separate shareholder advisory vote to approve the compensation of executives (Say-on-Pay).[15] Section 14A also requires companies to conduct a separate shareholder advisory vote to determine how often an issuer will conduct a shareholder advisory vote on executive compensation.[16]

Subjecting smaller reporting companies to submit a pay ratio disclosure would only complement the Section 14A requirement. The core policy behind the Say-on-Pay regulation is to enable better informed investment and proxy voting decisions.[17] However, Section 951(e) of the Dodd-Frank Act provides that the Commission may exempt small issuers from the Section 14A requirements if those issuer are disproportionately burdened.[18] Although the Commission had the option to exempt smaller reporting companies from the Say-on-Pay regulation, the Commission ultimately determined that smaller reporting companies were not disproportionately burdened by the requirement. As a result, the Commission made an equitable decision to only temporary exempt smaller reporting companies from the Say-on-Pay requirement. Smaller reporting companies was not required to disclose Say-on-Pay information until on or after January 21, 2013, which was a delayed effective date.[19]

This exemption indicates that permanently exempting smaller reporting companies from the Say-on-Pay requirement would be unjust. Investors have an interest in pay-related disclosures of smaller reporting companies.[20] Like the Say-on-Pay regulation, the Commission should not permanently exempt smaller reporting companies from the pay ratio disclosure requirement. Requiring smaller reporting companies to comply with the pay ratio disclosure requirement would only complement Congress's Section 14A requirement and further the Commission's decision to include smaller reporting companies to the Say-on-Pay regulation. It would also further support Congress's demand for greater pay-related disclosures.

If the Commission is concerned with the potential burdens on smaller reporting companies to make a pay ratio disclosure, the Commission could use a similar remedy from the Say-on-Pay regulation. That remedy would be to provide smaller reporting companies additional time before disclosing the company's pay ratio. The delayed effective date for smaller reporting companies will most likely allow those companies to observe how the rules operate for other companies and would provide enough time for preparation to abide by the new rule. The

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[14] SECURITIES AND EXCHANGE COMMISSION, No. S7-31-10, at 2, SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION AND GOLDEN PARACHUTE COMPENSATION (2010).
[15] *Id*. at 1.
[16] *Id*.
[17] *Id*. at 88.
[18] H.R. 4173 951(e) (2010).
[19] SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION AND GOLDEN PARACHUTE COMPENSATION, *supra* note 13, at 89.
[20] *Id*.

delayed effective date would also give the Commission time to make any needed adjustments to the pay ratio disclosure requirement that is more appropriate from smaller reporting companies. But, to permanently exempt smaller reporting companies from the pay ratio disclosure requirement would be an injustice to public investors and consumers.

To support Congress's demand for greater pay-related disclosures, I strongly suggest for the Commission to expand the disclosure requirement to ensure that all smaller reporting companies disclose their pay ratio. If the disclosure requirement were implemented for smaller reporting companies, investors will be able to research how the ratio develops over an extended period of time at individual companies; thus, giving investors the ability to make informed investment decisions. Also, investors would have more accurate information of how companies compare with industry peers that have similar business models.[21] If smaller reporting companies were excluded from the disclosure, investors would only receive a partial picture of these companies' pay practices.

There are a myriad of studies that demonstrates that high pay discrepancies within a company can negatively impact employee morale, productivity, and a company's overall long term financial performance.[22] Disclosing the pay ratio of companies would provide material information to help investment analysts better understand companies' overall compensation and overall health. Therefore, the salary ratio for smaller reporting companies provides important information for investors and support Congress's demand for pay-related disclosure.

III. Smaller reporting companies should be subjected to the pay ratio disclosure requirement because smaller reporting companies would not be disproportionately burdened by the requirement.

Under new rules from the Commission, smaller reporting companies are only required to submit a scaled pay ratio disclosure.[23] The Commission is concerned that smaller reporting companies will be disproportionately burdened by the requirement because of the company's size and resources.[24] However, the term "smaller reporting company" is a misleading term. The Commission defines a smaller reporting company as a company that has a public float of $75 million or has annual revenue of $50 million.[25] Based on this definition, a smaller reporting company is a large, lucrative company.

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[21] Matt Bloom and John Michel, *The Relationships Among Organizational Context, Pay Dispersion, and Managerial Turnover*, Academy of Management Journal (2002).
[22] *Id*.
[23] The 12 scaled item requirements are: (1) Description of Business (Item 101); (2) Market Price of and Dividends on Registrant's Common Equity and Related Stockholder Matters (Item 201); (3) Selected Financial Data (Item 301); (4) Supplementary Financial Information (Item 302); (5) Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303); (6) Quantitative and Qualitative Disclosures about Market Risk (Item 305); (7) Executive Compensation (Item 402); (8) Transactions with Related Persons, Promoters and Certain Control Persons (Item 404); (9) Corporate Governance (Item 407); (10) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges (Item 503); (11) Use of Proceeds (Item 504); and (12) Exhibits (Item 601). Release 34-56994, *Smaller Reporting Company Regulatory Relief and Simplification*, 73 Fed. Reg. 3 (Jan. 4, 2008).
[24] PAY RATIO DISCLOSURE, *supra* note 3, at 18.
[25] SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION, *supra* note 2, at 17.

Smaller reporting companies would not be burdened by Congress's pay ratio disclosure requirement because those companies have the means to produce the necessary information. According to the United States Census Bureau (the "Census") a small business is "a business that is independently owned and operated, is organized for profit, and is not dominant in its field."[26] The size standard eligibility is based on the average number of employees for the preceding 12 months, sales volume averaged over a three-year period, and the industry of the business.[27] Based on the Commission's definition, smaller reporting companies are not small businesses.

Most businesses in the United States are under $75 million in revenue. In fact, there are only a small percentage of firms and establishments that are over $75 million in receipt size. Merely .5% of all businesses have a receipt of $75 million or more and only 9.8% have a receipt of $35 million or more.[28] Receipts are "revenue for goods produced, distributed, or services provided, including revenue earned from premiums, commissions and fees, rents, interest, dividends, and royalties."[29] Receipts also exclude all revenue collected for local, state, and federal taxes.[30] These statistics put the size and revenue of smaller reporting companies into perspective. Smaller reporting companies are large, lucrative companies compared to the average small business and would not be burdened by the pay ratio disclosure requirement.

The size and revenue of smaller reporting companies should greatly influence the Commission to require these companies to disclose their pay ratio. Essentially, the burden and cost for smaller reporting companies to comply with the pay ratio disclosure requirement is nonexistent. Companies with a large amount of revenue would not have a financial burden to produce any pay ratio information. Large sized companies would also be able to hire the proper staff to produce the pay ratio information that Congress required. Therefore, large and lucrative companies, like smaller reporting companies, would not be disproportionately burdened by the pay ratio disclosure requirement because they would have the means to make such a disclosure.

Additionally, publicly traded companies have some distinct characteristics. The main characteristic is that publicly traded companies have stock that is publicly traded and regularly traded by a large number of public shareholders.[31] Although there are many mid-sized and smaller corporations whose stock is publicly traded, a vast majority of publicly traded companies are large in size in terms of employees and revenue.[32] Publicly traded companies continue to have issues regarding the pay disparity between executive officers and employees. This disparity also exists in smaller reporting companies because they are large, lucrative companies. The primary intent of the pay ratio disclosure requirement is to educate investors so that they can

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[26] U.S. Small Business Administration, *Definition of Small Business*, (October 1, 2013), http://www.sba.gov/content/what-sbas-definition-small-business-concern.
[27] *Id*.
[28] United States Census Bureau, *Statistics about Business Size (including Small Business) from the U.S. Census Bureau* (2008), http://www.census.gov/econ/smallbus.html.
[29] United States Census Bureau, *Statistics of U.S. Business* (2008), http://www.census.gov/econ/susb/definitions.html.
[30] *Id*.
[31] DWIGHT DRAKE, BUSINESS ORGANIZATIONS IN A PLANNING CONTEXT 320 (2013).
[32] RICHARD FREER AND DOUGLAS MOLL, THE PRINCIPLES OF BUSINESS ORGANIZATION 350 (2013).

make better and more informed investment decisions. The public would be interested in the executive compensation information from all publicly traded companies. Therefore, having smaller reporting companies comply with the pay ratio disclosure requirement outweighs the burden and cost of the disclosure.

If the Commission were to exempt smaller reporting companies, the definition of a smaller reporting company should be more reasonable. I respectfully propose that the Commission adopt the Census's definition of a small business as the definition of smaller reporting companies. The Census's definition would be a more accurate definition, as most of those businesses are not publicly traded and actually small in size and revenue. Since most of those businesses do not have much public float, the public will probably not be as concerned or interested with the pay ratio between executive officers and employees. Therefore, the pay ratio disclosure of small businesses, based on the standards of the Census, may not be beneficial to the public or the Commission. Thus, only those businesses should be federally exempt from the pay ratio disclosure requirement.

IV. Conclusion

Accordingly, smaller reporting companies should be required to disclose the pay ratio compensation between the chief executive officer and other employees. As mentioned previously, most publicly traded companies are large and extremely lucrative. It is highly unlikely that smaller reporting companies would be disproportionately burdened by the pay ratio disclosure requirement because these companies have the resources to make pay related disclosures. The disclosure requirement would benefit consumers, investors, activists, and further the policies of the Dodd-Frank Act and Congress. For all of these reasons, I strongly encourage for the Commission to reconsider exempting smaller reporting companies from the pay ratio disclosure requirement.

Thank you, again, for your time and consideration in developing proposed amendments to Section 953(b) of the Dodd-Frank Act. I appreciate you providing a unique opportunity to submit comments on the proposed amendments. Thank you in advance for considering and reviewing my suggestions. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Class of 2014
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